IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 30.11.2006

State of Punjab Vs. Vishwa @ Happy

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. K.S. Boparai, Addl. Advocate General Punjab,
for the appellant.

Virender Singh, J.

Vishwa alias Happy son of Pritam Singh son of Sadda Ram, resident of Bathinda was booked in a case bearing FIR No.543 dated 12.10.2004, under Sections 304/376 IPC, registered at Police Station Kotwali, Bathinda. Vide impugned judgment of learned Additional Sessions Judge Bathinda dated May 26, 2006, he has earned acquittal on both the charges. Aggrieved by the same, State of Punjab has preferred the instant appeal along with an application bearing Crl. Misc. No.559-MA of 2006, under Section 378 (3) of the Code of Criminal Procedure for grant of leave to appeal.

The prosecutrix a married lady who had got married five years ago prior to the present occurrence. She left the house of her husband and started residing with her parents. She was coming in a train from village Tappa Mandi (Village of her parents) to Bathinda when the

respondent met her. As per the allegations he promised her that he would marry her and would keep her as his wife. On account of the said promise and allurement, she joined his company. It is then alleged that the prosecutrix became pregnant after two months of her stay at the house of the respondent and when the pregnancy was of seven months old, the respondent started compelling her to go in for abortion. This resulted into bickering. As per the allegations, the respondents used to beat the prosecutrix. Ultimately, a child was born at Bathinda who died after 1 ¼ months. The allegation is that before the death of the child, on 11.10.2004 at about 6.00 P.M. the prosecutrix had gone to see one lady known as Neelam Pardhan when on the way the respondent met her and she disclosed that her son was lying ill and money was needed for the treatment. However, no money was given to her and the child ultimately died as no proper care was provided for want of money. Primarily on these allegations, a case was registered under Sections 376 and 304 Part-I IPC. After appreciating the entire evidence, the learned trial Court has acquitted the respondents.

We have heard Mr. Boparai, learned Addl. Advocate General, Punjab and with his assistance gone through the entire evidence.

Mr. Boparai submits that the respondent had fraudulently given consent to the prosecutrix to keep her as wife and when ultimately she became pregnant, the respondent had turned her out. He then contends that the respondent misrepresented the prosecutrix and on

account of his false assurances she had fallen a prey to his sexual lust. He did not even provide proper care to the child of 1 ¼ months who ultimately died in the hospital. All these allegations when taken collectively prove both the charges against the acquitted respondent.

We do not agree with the submissions advanced by Mr. Boparai.

The learned trial Court while dislodging the case of the prosecution qua the charge of Section 376 IPC has given a categoric finding that the prosecutrix herself submitted to the accused for sexual intercourse and ultimately if he did not fulfil his promise of marrying her, the same would not make him liable for the offence under Section 376 IPC. For arriving at the said finding, the learned trial Court has relied upon a judgment of Apex Court rendered in ***Deelip Singh alias Dilip Kumar Vs. State of Bihar 2005 (1) Criminal Court Cases 655***. It is further observed by the learned trial Court that from the statement of the prosecutrix (PW3) it is evident that the respondent had rather provided her shelter as she disclosed to him that there was no one to look after her after her strained relations with her previous husband Shyam Lal.

We do not find any flaw in the finding arrived at by learned trial Court while acquitting the respondent of the charge of Section 376 IPC and uphold the same.

So far as other charge of Section 304 Part-I IPC is concerned, the learned trial Court has observed that no DNA test of the

child was got conducted and from the evidence it was not clear as to who was the father of the child. The Investigating Officer even did not record the statements of the parents of the prosecutrix or any one from the village Tapa (Village of parents of the prosecutrix). While finding other flaws also in this regard, the learned Judge in para 20 of the impugned judgment observed as under:-

> "PW3 claimed in cross-examination as if child was conceived just two months after her stay at house of accused that stay started by P.W. 3 at house of accused about 4 years prior to recording other statement on 5.8.2005 as pointed above. This means that as per P.W.3 child was begotten somewhere in 2001 or 2002. If that be the position, then it cannot be said that the child was just 1 ¼ months of age at the time of conduct of post-mortem on 12.10.2004 by P.W.1. So, in view of this statement of prosecutrix as P.W.3 do not corroborate the story of prosecution case regarding the dead child being belonging to accused, because the dead child would have been conceived in October or November, 2003 at the most. However, P.W.3 as referred above claims as if the child begotten from accused was conceived by her some where in 2001 and as such it is doubtful as to whether the dead child actually was conceived from accused or not. In view of that also case of prosecution qua commission of offence punishable under section 304 I.P.C. is not proved."

After having re-scanned the entire case of the prosecution, we do not find sufficient material which may warrant interference of this Court in the order of acquittal passed by the learned trial Court.

It has been repeatedly held by the Apex Court that although

the appellate Court has full powers to review the evidence upon which the order of acquittal is founded, but while dealing with an order of acquittal, the appellate Court is required to seek an answer to the question as to whether findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. We do not find any demonstrable perversity in the impugned judgment as the learned trial Court has deeply discussed each and every aspect of the matter on the basis of the evidence adduced before it. We are, therefore, hesitant in granting leave to appeal in this case.

Resultantly, Criminal Misc. No.559-MA of 2006 is hereby dismissed.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

November 30, 2006
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